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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XV136

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Menhaden Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of non-compliance referral.

SUMMARY: NMFS announces that on November 15, 2019, the Secretary of Commerce (Secretary) received a letter from the Atlantic States Marine Fisheries Commission finding the Commonwealth of Virginia out of compliance with Amendment 3 to the Atlantic Menhaden Interstate Fishery Management Plan and requesting Federal non-compliance review under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act. This notice is necessary to alert the public that the Secretary has received and is reviewing the referral of non-compliance from the Commission. The intended effect of this notice is to inform the public of the Commission's recommendation to the Secretary and to outline both the decision-making process that will be used and potential outcomes of the non-compliance review. If the Secretary determines that Virginia failed to carry out its responsibilities under the Coastal Atlantic Menhaden Interstate Fishery Management Plan, and if the measures it failed to implement are necessary for conservation of the fishery, then, according to the Atlantic Coastal Fisheries Cooperative Management Act, the Secretary must declare a moratorium on fishing for Atlantic menhaden in Virginia waters.

DATES: The Secretary intends to make a determination on this matter on or about December

17, 2019, and will publish its finding in the **Federal Register** immediately thereafter.

FOR FURTHER INFORMATION CONTACT: Derek Orner, Fishery Management

Specialist, (301) 427-8567, *derek.ornier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

The Atlantic States Marine Fisheries Commission (Commission) developed Amendment 3 to the Atlantic Menhaden Interstate Fishery Management Plan (ISFMP) to pursue the development of ecological reference points (which consider the ecological role of menhaden in regards to management of the species) and to establish an allocation method which provides fair and equitable access to all participants in the fishery. Amendment 3 contained a management program designed to account for the multiple roles menhaden play, both in supporting fisheries and the marine ecosystem. Issues included in Amendment 3 included: Reference points; Allocation methods and timeframes; Quota transfers and rollovers; Incidental catch; Episodic events programs; and Chesapeake Bay total removals. Specifically, the Commission required Virginia to implement a total allowable harvest from the Chesapeake Bay that would not exceed 51,000 mt. Amendment 3 was approved in the fall 2017, and was to be fully implemented by the Commonwealth of Virginia for the 2018 fishing season. Virginia, however, did not implement the Commission's recommended 51,000 mt cap and instead maintained its pre-existing 87,216 mt cap. Atlantic menhaden in Virginia are managed by the legislature and not the Virginia Marine Resources Commission, which manages all other Virginia fishery species. The Virginia delegation to the Commission agreed it was out of compliance and voted for a non-compliance finding at the Commission's Atlantic Menhaden and Policy Boards as well as the Commission's Business Section. On October 31, 2019, the Commission found the Commonwealth of Virginia out of compliance for not fully and effectively implementing and enforcing the Amendment 3

measures. The Commission notified the Secretary of its non-compliance finding by letter on November 15, 2019.

Federal response to a Commission non-compliance referral is governed by the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). Under the Atlantic Coastal Act, the Secretary must make two findings within 30 days after receiving the non-compliance referral. First, the Secretary must determine whether the state in question (in this case, the Commonwealth of Virginia) has failed to carry out its responsibilities under the ISFMP. Second, the Secretary must determine whether the measures that the State has failed to implement or enforce are necessary for the conservation of the fishery in question. If the Secretary determines that Virginia has failed to carry out its responsibilities under the ISFMP, and if the measures it failed to implement are necessary for conservation, then, according to the Atlantic Coastal Act, the Secretary must declare a moratorium on Atlantic menhaden fishing in Virginia waters. Further, the moratorium must become effective within six months of the date of the Secretary's non-compliance determination. If Virginia is found out of compliance by the Secretary and later implements Amendment 3 measures, the Atlantic Coastal Act allows the state to petition the Commission that it has come back into compliance. If the Commission concurs that Virginia has come into compliance, the Commission will notify the Secretary. If the Secretary concurs, the moratorium will be withdrawn.

NMFS has notified Virginia, the Commission, and the applicable Fishery Management Councils in separate letters, of its receipt of the Commission's non-compliance referral. NMFS solicits comments from the Commission and Councils to the extent either is interested in providing comments on the non-compliance referral. NMFS also indicated to Virginia that it is entitled to meet with and present its comments directly to NMFS, if so desired.

The Secretary intends to make its non-compliance determination, including supporting rationale, on or about December 17, 2019, which is 30 days after receipt of the Commission's non-compliance referral. NMFS will announce its determination by **Federal Register** notice immediately thereafter. To the extent that the Secretary makes an affirmative non-compliance finding, NMFS will announce the effective date of the moratorium in that **Federal Register** notice.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 25, 2019.

Jennifer M. Wallace,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service

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